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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4996 of 2006
Date of decision: 7.12.2007

Gian Parkash Sood **...Petitioner**

Versus

M/s Brij Lal Tilak Raj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. M.L.Saggar, Senior Advocate with
Mr. G.S.Brar, Advocate for the petitioner.

Mr. J.S.Brar, Advocate for the respondents.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated August 12, 2006 passed by learned Additional Civil Judge-cum-Rent Controller, Moga whereby application for amendment of the ejectment petition filed by the petitioner-landlord was dismissed.

The eviction of the respondents was sought on the ground of non payment of rent and subletting. In the petition originally filed, it was stated that M/s Brij Lal Tilak Raj is a partnership firm to whom the shop and the room in dispute was rented out. According to the petitioner, the mistake occurred for the reasons that the rent note signed by the parties was written in Urdu language and the counsel for the petitioner was not conversant with the Urdu language. Further in the mortgage deed with regard to another shop, which was mortgaged by the petitioner to M/s Brij Lal Tilak Raj, Brij Lal has described himself as partner of the said firm whereas actually he was proprietor of this firm. The application was contested by the respondents with the plea that the story put up by the petitioner is false and after thought. The petitioner cannot be permitted to

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withdraw the admission already made by him in the application filed and even otherwise the rent note shows Brij Lal as the tenant and not the firm as claimed. The objection regarding delay in filing the application was also raised.

Learned Rent Controller rejected the application primarily for the reason that petition was quite old and in case the same is allowed at this belated stage, the trial will start once again and further that it will prejudice the case of the respondents and the amendment was not necessary for adjudication of the controversy between the parties.

Learned Senior Counsel appearing for the petitioner submitted that the mistake which occurred while drafting the petition is bonafide as in the rent note executed between the parties, Brij Lal was shown as proprietor of the firm whereas by mistake, it was mentioned in the petition as a partnership firm. The amendment sought to be made by the petitioner cannot in any manner be said to be an after thought as the same is based on the document executed between the parties in the form of rent note and the same is already on record. Even if objection of the respondents is considered regarding withdrawal of admission, there is reasonable explanation available for the same in the form of written document. As far as delay is concerned, the submission on that account is that firstly it is the petitioner, who is suffering and will suffer and secondly on that account respondent can very well be compensated with costs.

On the other hand, learned counsel for the respondents submitted that if the amendment is allowed that will change the very nature of the petition filed by the petitioner and the same does not deserve to be allowed at this belated stage because for the same no reasonable explanation is available. Respondents will certainly be prejudiced with the amendment.

Having heard learned counsel for the parties, I am of the view that prayer made in the petition deserves to be accepted as the amendment sought to be made by the petitioner regarding change in the pleadings to the effect that firm in question is a sole proprietorship concern and not partnership firm deserves to be permitted. Though it will amount to withdrawal of admission made by the petitioner regarding the status of the

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firm to which the premises was rented out, however, still due explanation for withdrawal of such admission is available as the same is sought to be made on the basis of rent note signed between the parties. In any case effect of the amendment and the rent note is not being considered in these proceedings as the same shall be considered by the Rent Controller only at the time of final disposal of the rent petition.

As far as delay is concerned, even that objection raised by the respondents is not fatal. The same will not be sufficient to refuse relief to the petitioner as on that account, respondents can very well be compensated with costs. Hon'ble the Supreme Court in **Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (Dead) and others (2007) 6 Supreme Court Cases 737** while considering a similar issue opined as under:-

> "We find that the trial court and the appellate court were not justified in refusing the amendment of the plaint sought for by the plaintiff. No doubt there had been delay in seeking amendment but that delay could have been compensated by awarding costs to the contesting defendants 1 to 9."

For the reasons stated above, the revision petition is allowed. The amendment sought to be made by the petitioner is permitted. However, the same shall be subject to payment of Rs. 3,000/- as costs to the respondents. Parties through their counsel are directed to appear before the Rent Controller on December 21, 2007 for further proceedings. As the proceedings in the petition were initiated in 2002, the trial be expedited.

December 07, 2007 **(Rajesh Bindal)**
Pka **Judge**